IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 2511 of 2007

DATE OF DECISION: 13.11.2007

Jagdish Rai

……Petitioner

Versus

The Haryana Financial Corporation

……Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present:- Mr. Rajesh Garg, Advocate
for the petitioner.

Mr. Puneet Gupta, Advocate
for the respondent.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing notice dated 31.1.2007 (P-5), issued to the petitioner under Section 32G of the State Financial Corporations Act, 1951 (for brevity, 'the Act'). The notice has been issued by the respondent to effect recovery of Rs. 35,49,788/- and another amount of Rs. 86,24,163/- with further interest at the rate of 9% per annum from 1.6.2006 and 1.9.2006 respectively, with half yearly rests until

realization besides other expenses. It is appropriate to mention that under Section 32G of the Act, the recovery is to be effected as arrears of land revenue.

Brief facts may first be noticed. The petitioner has been a partner in the firm M/s Annapurna Udyog, Kaithal. The aforesaid firm was sanctioned term loan by the respondent on 28.12.1992, amounting to Rs.12.15 lacs. Earlier to that another amount of Rs. 4.50 lacs on 10.9.1991 was also sanctioned. According to the terms and conditions of the loan agreement, the land, plant, building and machinery (P-1 and P-2) were mortgaged with the respondent. In addition, the firm had also furnished a collateral security by creating a mortgage of six marlas of land situated at village Patti Chaudhary, Tehsil and District Kaithal in order to secure the loan. It is claimed by the petitioner that against the sanctioned loan of Rs.4.50 lacs, the firm availed an amount of Rs. 4.32 lacs. The firm also availed an amount of Rs. 6.87 lacs against the sanctioned loan of Rs. 12.15 lacs. They failed to repay the loan amount to the respondent as per terms and conditions. A sum of Rs. 50,582/- was, however, paid back. On account of the default the respondent took over and sold the factory in the year 1995 for about Rs. 5 lacs as well as collateral security of six marlas of land in the year 2000 for a total consideration of Rs. 55,000/-. On 7.6.2005, the petitioner received a notice (P-3) stating therein that a sum of Rs. 90.86 lacs was due from the petitioner, which he was to deposit by 1.7.2005. The notice was issued under the provisions of the Haryana Public Moneys (Recovery of Dues)

Act, 1979 (for brevity, 'the 1979 Act'). The aforesaid notice was challenged by the petitioner by filling C.W.P. No. 11263 of 2005, which was allowed on 10.10.2006 by a Division Bench of this Court on the ground that respondent did not have any jurisdiction to issue such a notice of recovery as per the judgment of Hon'ble the Supreme Court in the case of **Unique Butyle Tube Industries (P) Ltd.** v. **U.P. Financial Corporation and others, (2003) 2 SCC 455**. This Court while allowing the writ petition and quashing the recovery certificate granted liberty to the respondent to proceed afresh against the petitioner as per law. After the aforesaid decision of this Court, respondent has issued the impugned notice dated 31.1.2007 by invoking provisions of Section 32G of the Act requiring the petitioner to pay approximately a sum of Rs. 1.25 crores.

The petition has been opposed by the respondent by filling written statement. It has been pointed out in the written statement that M/s Annapurna Udyog, Kaithal, is a partnership concern and the petitioner is one of the partner. The firm was set up for manufacturing Gram Dal and grinding of wheat on job basis. For the aforesaid purpose, it was sanctioned a loan of Rs. 2.46 lacs and the availed amount was Rs. 2.00 lacs and that amount was adjusted. In 1991, the firm added one plant for manufacturing Masri Dal and it was sanctioned loan of Rs. 4.50 lacs on 10.9.1991 for construction of building and installation of new machinery. The amount of Rs. 4.33 lacs was disbursed, vide mortgage deed dated 15.11.1991. The firm had paid only a sum of Rs. 200/- on 19.11.1992. The payment of sum

of Rs. 50,582/- claims to have been paid by the petitioner, has also been disputed. The respondent-Corporation again sanctioned a loan of Rs.12.15 lacs on 20.12.1992 and the firm had availed a sum of Rs. 6.87 lacs, vide mortgage deed dated 26.2.1993. When the firm committed default, possession of the Unit was taken over under Section 29 of the Act on 31.5.1994 and it was sold for Rs. 5.70 lacs on 9.5.1995. Accordingly, the sale proceeds were credited to their loan account. The collateral security was also disposed of by the respondent for Rs. 51,000/- on 16.2.2000 and the amount was credited to the loan account. It has been claimed that the total outstanding dues are as under:-

Account-I	:	Rs.29,56,664/- plus interest with effect from 1.6.2005.
Account-II	:	Rs. 70,63,057/- plus interest with effect from 1.9.2005.

The respondent has denied that there is any period of limitation provided by the Act. It is claimed that recovery of outstanding due is an ongoing process. According to the respondent, the Parliament intentionally did not prescribe any period of limitation in the Act because it was fully aware of the recovery of public dues and the faults which are likely to be committed in repayment of the loan. It has also been pointed out that the writ petition is premature as it is directed against a notice whereby the petitioner has been called for personal hearing before specified authority.

Mr. Rajesh Garg, learned counsel for the petitioner has argued that the loan in the present case was availed in the year 1991

and 1992 and recovery of the loan could have been effected within three years, as per provisions of Article 137 of the Limitation Act, 1963 (for brevity, 'the Limitation Act'). He has also placed reliance on a judgment of Hon'ble the Supreme Court in the case of **State of Kerala** v. **V.R. Kalliyanikutty, (1999) 3 SCC 657**, and argued that the respondent cannot recover the amounts, which are not legally recoverable nor can a defence of limitation available to a debtor like the petitioner in a suit or other legal proceedings could be taken away. He has referred to para 4, 6 and 10 of the judgment. He has then submitted that in respect of Section 31 of the Act, Hon'ble the Supreme Court has taken the view that by way of legal fiction, the procedure akin to execution of decrees under the Code of Civil Procedure, 1908, has been permitted to be invoked and that Article 137 of the Limitation Act has been made applicable to proceedings under Section 31 of the Act. In that regard, he has placed reliance on the decision of Hon'ble the Supreme Court in the case of **Maharastra State Financial Corporation v. Ashok K. Agarwal, (2006) 9 SCC 617**. Learned counsel has also placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Delhi Financial Corporation v. Rajiv Anand and Others, (2004) 11 SCC 625,** and argued that notice issued under Section 32G of the Act has to be considered as an execution proceedings, which presupposes the existence of an order, which is sought to be executed and, therefore, unless an order has come into existence, no execution proceedings could be initiated against the petitioner.

Mr. Puneet Gupta, learned counsel for the respondent has argued that no period of limitation as per the provisions of the Limitation Act would apply to proceedings under Section 32G of the Act because the recovery is sought to be effected not by the Court. According to learned counsel, the Managing Director of the respondent-Corporation cannot be regarded as Court for the purposes of Limitation Act. In that regard, he has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Sree Bank Ltd. v. Sarkar Dutt Roy and Co., AIR 1966 SC 1953** and **Sakuru v. Tanaji, (1985) 3 SCC 590**. He has maintained that the provisions of Article 136 of the Limitation Act use the expression 'decree', whereas in the present case no execution of the decree is undertaken. Referring to the judgment of Hon'ble the Supreme Court in Rajiv Anand's case (supra), learned counsel has submitted that the proceedings initiated in pursuance to Section 32G of the Act are in the nature of execution and once the Managing Director has determined the amount, the recovery has to be effected. He has further submitted that in any case, the unit was sold on 9.5.1995 and collateral security was further sold on 16.2.2000. According to learned counsel a recovery certificate was issued immediately thereafter on 26.9.2000, which resulted into initiation of the proceedings under Section 3 of the 1979 Act. He has emphasized that the aforesaid recovery certificate was set aside by this Court vide order dated 10.10.2006 (P-4) and thereafter, the period from 26.9.2000 till 10.10.2006 has to be set off for calculating the period

of limitation. Learned counsel has pointed out that the mortgage deeds were executed on 15.11.1991 and 26.2.1993. He has placed reliance on Article 62 of the Limitation Act and argued that to enforce payment of money secured by a mortgage or otherwise charged upon immoveable property, a period of 12 years has been provided under Article 62 of the Limitation Act from the date the money becomes dues. If the period of limitation is counted from 15.11.1991 or 26.2.1993 then the recovery certificate issued under the 1979 Act was well within the period of limitation. The period which was spent in the process of the earlier recovery litigation has to be excluded as per provisions of Section 14 of the Limitation Act because the respondent must be considered to have followed a wrong remedy. Learned counsel has argued that the right of the respondent to effect recovery remains in tact and only remedy has to be altered. He has also placed reliance on a Division Bench judgment of this Court in the case of **M/s SD Processors v. Haryana Financial Corporation (C.W.P. No. 6252 of 2007, decided on 17.8.2007)** and argued that the period of limitation would commence from the date of taking over of possession.

Another argument raised by Mr. Gupta is that once no express provision has been made for application of the Limitation Act then the intention of the Legislature becomes clear and by necessary implications it has to be so concluded. He has substantiated the argument urging that Section 32G of the Act was added by Act No. 43 of 1985 with effect from 21.8.1985 and the Legislature was

obviously aware of the existence of the Limitation Act. Therefore, had there been any intention to apply Limitation Act then it could have easily made express provision for its application to the proceedings initiated under Section 32G of the Act. In the absence of specific express provision by the Legislature it has to be construed to mean that the Limitation Act is not attracted to the proceedings initiated under Section 32G of the Act. In support of his submission learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Hindustan Times Ltd. v. Union of India, (1998) 2 SCC 242,** and argued that in the aforementioned case the Employees Provident Fund Miscellaneous Provisions Act, 1952 (for brevity, 'the 1952 Act') was subject matter of consideration and the argument based on the Limitation Act was rejected because there was no express provision extending the aforesaid Act to those proceedings which were to be initiated under the 1952 Act.

Mr. Gupta, learned counsel has also submitted that the writ is totally premature as the petitioner has merely been asked to appear before the Managing Director for determination of the total due amount and that no writ is maintainable against a show cause notice as has been held by a Division Bench of this Court in the case of **Delhi Studio Colour Lab v. Union of India, 2007 (2) RCR (Civil) 472**.

After hearing learned counsel for the parties, we are of the considered view that this petition is devoid of merit and is, thus, liable to be dismissed. It would be expedient to read Section 32G of

the Act, which is as under:-

> "32-G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue. – Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

A perusal of the aforementioned provision makes it evident that when the Financial Corporation or any person authorised by it in writing makes an application to the State Government for recovery of the amount due to it then on the satisfaction of the State Government or any such authority specified in this behalf, may issue a certificate for that amount to the Collector. The amount so due is then to be recovered in the same manner as an arrear of land revenue. This provision was added in the year 1985 by the Amendment Act 43 of 1985. There is no reference either in Section 32G of the Act or any

other section to the provisions of Limitation Act, which implies the intention of the Legislature to exclude the application of the aforementioned statute. It is well settled principle of interpretation of statute that the intention of Legislature is either expressed or could be inferred from necessary intendment. In that regard reliance may be placed on Constitution Bench judgments of Hon'ble the Supreme Court in the cases of **Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24** and **R. Rajagopal Reddy v. Padmini Chandra-sekharan, (1995) 2 SCC 630**. We are also fortified in our view by the judgment of Hon'ble the Supreme Court in the case of Hindustan Times Ltd. (supra). The Supreme Court in the aforementioned judgment had considered the question as to whether the provisions of Limitation Act would apply to the 1952 Act. Rejecting the arguments that the Limitation Act was to apply, it has been held as under:-

> " 19. Now the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. The monies payable into the Fund are for the ultimate benefit of the employees but there is no provision by which the employees can directly recover these amounts. The power of computation and recovery are both vested in the Regional Provident Fund Commissioner or other officer as provided in Section 14-B. Recovery is not by way of suit. Initially, it was provided that the arrears could be recovered in the same manner as arrears of land revenue. But by Act 37 of

1953 Section 14-B was amended providing for a special procedure under Sections 8-B to 8-G. By Act 40 of 1973 Section 11 was amended by making the amount a first charge on the assets of the establishment if the arrears of employee's contribution were for a period of more than 6 months. By Act 33 of 1988, the charge was extended to the employee's share of contribution as well.

20. In spite of all these amendments, over a period of more than thirty years, the legislature did not think fit to make any provision prescribing a period of limitation. This in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. As the amounts are due to the Trust Fund and the recovery is not by suit, the provisions of the Indian Limitation Act, 1963 are not attracted. In *Nityananda M. Jishi v. LIC of India (1969) 2 SCC 199,* it has been held that the Limitation Act, 1963 has no application to Labour Courts and, in our view, that principle is equally applicable to recovery by the authority concerned under Section 14-B. ……"

We are further of the view that the recovery proceedings are in the nature of execution proceedings, as has been held by Hon'ble the Supreme Court in Rajiv Anand's case (supra). The object of issuance of a show cause under Section 32G of the Act is

only to effect recovery in accordance with the books of accounts where the amount due is always available. This process of determination of the amount due has been evolved by issuance of show cause notice to the borrower and thereafter the amount is determined and no period of limitation can be read in these proceedings. Therefore, we are of the view that the provisions of the Limitation Act cannot be made applicable to the proceedings initiated under Section 32G of the Act because neither there is any express provision made nor any necessary intendment is inferable.

The argument of the learned counsel for the petitioner on the aforementioned issue based on the judgment of Hon'ble the Supreme Court in the case of Maharashtra State Financial Corporation (supra) cannot be accepted because Section 31 of the Act is couched entirely in different language and the remedy has been provided by moving an application through the process of Court i.e. District Judge whereas Section 32G of the Act was added in 1985 with the sole object of enforcing the claim of Corporation through a special mode of recovery. The remedy provided by Section 32G is supplemented and in addition to any other remedy as is evident from the perusal of the provision itself. Therefore, we find that the judgment of Hon'ble the Supreme Court in the case of Maharashtra State Financial Corporation (supra) is not applicable. The argument is wholly misplaced and the same is accordingly rejected.

Even otherwise in the present case two mortgage deeds were executed on 15.11.1991 and 26.2.1993. According to the

provisions of Article 62 of the Schedule appended to the Limitation Act, the period of limitation provided in such cases is 12 years. The recovery certificate was issued on 26.9.2000 after the sale of the unit on 9.5.1995. Thereafter even the collateral security was sold on 16.2.2000. The recovery certificate was issued under Section 3 of the 1979 Act, which was set aside by this Court on 10.10.2006 by placing reliance on a judgment of Hon'ble the Supreme Court in the case of Unique Butyle Tube Industries (P) Ltd. (supra). The Division Bench while allowing the petition has granted permission to the respondent to proceed against the petitioner in accordance with law [C.W.P. No. 11263 of 2005, decided on 10.10.2006 (P-4)]. Firstly the period of limitation of 12 years was not completed when the recovery certificate was issued on 26.9.2000 as the mortgage deeds were executed on 15.11.1991 and 26.2.1993. Therefore, even if it is assumed that the Limitation Act was applicable, we find that the recovery certificate was issued within the period of limitation on 26.9.2000 and thereafter permission has been granted by this Court to proceed against the petitioner in accordance with law, which has resulted in issuance of notice under Section 32G of the Act on 31.1.2007. Hence, we do not find any legal infirmity in the procedure adopted by the respondent.

For the reasons aforementioned, this petition fails and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 13, 2007
pooja/Pkapoor

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